SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *XD v. SZ*, 2022 NSSC 202

Date: 20220722
Docket: *Sydney* No. 119508
Registry: Sydney

Between:

XD

Applicant

v.

SZ

Respondent

Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	June 16 & 17, 2022, in Sydney, Nova Scotia
Written Release:	July 22, 2022
Counsel:	Pavel Boubnov for the Applicant Courtney Somerton for the Respondent

By the Court:

BACKGROUND:

[1] This is a decision on a mobility application filed by Ms. D. She and Mr. Z are the parents of two young children, now 5 and 4 years of age.

[2] The parties met at Cape Breton University (CBU) and lived together for about three years. Their two daughters were born in Sydney. The parties separated in late 2018 and signed a separation agreement on January 4, 2019, dealing with parenting, child support, and property issues.

[3] The relevant provisions of the agreement for purposes of this application are: clause 4.1 which grants Ms. D custody of the children; and clause 4.2 which provides Mr. Z with parenting time "one day per week as mutually agreed to by the parties".

[4] Ms. D filed this application to permit the children's relocation to Ontario on February 13, 2020. Mr. Z contests Ms. D's mobility application. He seeks an order placing the children in his care if Ms. D wishes to move.

[5] I heard evidence on June 16 & 17, 2022 from both parties, as well as Ms. D's parents, and Mr. M, who is a friend of the couple. After hearing submissions from counsel, I reserved decision. This is my decision and reasons.

ISSUES:

1. Did Mr. Z agree to (or acquiesce to) the move?
2. If not, is Ms. D in compliance with the mobility requirements of the governing legislation, such that a presumption arises in favour of the move?
3. If neither of the above applies, should the parenting provisions of the agreement (as incorporated in the court order) be varied to permit relocation of the children to Ontario?

ISSUE #1:

[6] Ms. D sent a text to Mr. Z on August 3, 2019, at 5:15 pm which is entitled "Relocation Notice". In it, she advised that:

> I am planning to move to Toronto, Ontario, with the children after this November, or maybe February in 2020.
>
> We are going to move because children could receive good education in Ontario. And also there are more job opportunities for me. Children are the most important reason that every year I made every decision. I would like to support them better. I was wondering if you will be happy for this decision. If you are going to move in the future, please let us know. Thank you very much!
>
> Sincerely,
>
> [XD] [translated]

[7] Ms. D says that Mr. Z consented to the move, or at the very least he acquiesced. In support of that argument, Ms. D tendered a text in which he replied to her "Relocation notice" as follows:

> "I need the detailed address to be know where to go to visit the children." [translated]

[8] Ms. D further says that after this exchange, Mr. Z offered to buy her home, thus reinforcing her impression that he agreed to the move.

[9] I find that Mr. Z's reply can be interpreted in one of two ways: as consent or acquiescence; or as a request for more information. I find the latter interpretation is the most likely, given the surrounding circumstances.

[10] The timing is important here. The parties had signed a separation agreement on January 4, 2019, which provides Mr. Z with parenting time. The agreement makes no mention of a proposed move, nor does it address mobility in general. Only seven months later, Ms. D sent the text advising that she planned to move. A month later she applied to change the children's names. Less than a week after that, she filed an application for child support.

[11] Mr. Z filed a response to Ms. D's applications on October 25, 2019. It asks for enforcement of his parenting time, as well as registration of the agreement. The parties resolved the competing applications by registering the agreement as an order of the court. It addresses primary care, parenting time, and child support.

[12] Even if Ms. D interpreted Mr. Z's initial response as consent or acquiescence, it was clear after October 25, 2019, that he wasn't in agreement. He sought to enforce his parenting time, and Ms. D let him believe this would happen by

consenting to the registration of their agreement. Yet days after that order was issued, she moved to Ontario.

[13] Further, even if Mr. Z's text could be interpreted as consent, at most it was a conditional consent. He asked for an address where the children will be living. There's no evidence that Ms. D responded with that information, so the condition wasn't met.

[14] I therefore find that Mr. Z neither agreed, nor acquiesced, to the move with the children to Ontario.

ISSUE #2:

[15] Ms. D says that she gave notice to Mr. Z in accordance with the governing legislation before relocating with the children. Mr. Z disputes that.

[16] The *Parenting and Support Act*, R.S.N.S. 1989, c. 160 (*PSA*), governs this couple's parenting arrangements. It specifically addresses what's required when a parent wishes to relocate with a child:

> **Relocation**
>
> 18E (1) In this Section and Sections 18F to 18H,
>
> (a) "person planning to relocate" means
>
> (i) a person who is planning a change of that person's place of residence and is a parent or guardian or a person who has an order for contact time with the child,
>
> (ii) a parent or guardian who is planning a change of both that person's and the child's place of residence, and
>
> (iii) a parent or guardian who is planning a change of the child's place of residence;
>
> (b) "relocation" means a change to the place of residence of
>
> (i) a parent or guardian,
>
> (ii) a person who has an order for contact time with the child, or
>
> (iii) a child
>
> that can reasonably be expected to significantly impact the child's relationship with a parent, a guardian or a person who has an order for contact time with the child.

(2) A person planning to relocate shall notify, at least sixty days before the expected date of the planned relocation, the parents and guardians of the child and any person who has an order for contact time with the child of the planned relocation.

(3) The notification under subsection (2) must be in writing and must include

(a) the date of the planned relocation;

(b) the location of the new place of residence and, if known, the address;

(c) all available contact information for the person giving the notification; and

(d) the proposed changes to decision-making responsibility, parenting arrangements, parenting time, contact time and interaction resulting from the relocation.

(4) and (5) repealed 2021, c. 15, s. 7. (6)

(6) This Section does not apply where an agreement registered under this Act or a court order provides a different notification requirement for a planned relocation. 2015, c. 44, s. 20; 2021, c. 15, s. 7

…

Relocation considerations

18H (1) When a proposed relocation of a child is before the court, the court shall give paramount consideration to the best interests of the child.

(1A) The burden of proof under subsection (1) is allocated as follows:

(a) where there is a court order or an agreement that provides that the child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child, unless the other party is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(b) where there is a court order or an agreement that provides that the child spend the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child, unless the party who intends to relocate the child is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(c) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends substantially equal time in the care of each party, the

> party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child;
>
> (d) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child;
>
> (e) for situations other than those set out in clauses (a) to (d), all parties to the application have the burden of showing what is in the best interests of the child.

[17] Ms. D is a parent planning to change the residence of herself and the children. The proposed move to Ontario can reasonably be expected to significantly impact Mr. Z's relationship with the children, as he would have far less opportunity to see them in Ontario. Ms. D was therefore required to comply with the notice requirements under s.18E of the *PSA*.

[18] Ms. D's text of August 3, 2019, conforms with the requirement to put the notice of relocation in writing, and to provide at least 60 days' notice of the proposed move.

[19] However, her notice does not comply with the other *PSA* requirements. It fails to provide a specific date for the proposed move, an address where the children will be residing, all available contact information for Ms. D in Ontario, or a proposal for Mr. Z's parenting time with the children after the move.

[20] The affidavit Ms. D filed in support of her mobility application on February 13, 2020, doesn't fill those gaps. It simply references a home that she bought in the "Toronto area". In the affidavit she filed in May 2022, Ms. D specifies that she bought a townhouse in the community of Richmond Hill, Ontario, but to date, she had yet to provide a specific address.

[21] In that May 2022 affidavit, Ms. D sets out a proposal for Mr. Z to exercise parenting time after the move, but this proposal came 17 months after she initially moved, and three months after she filed her mobility application. Her proposal lacks details such as dates and travel arrangements. I find the information in Ms. D's affidavits doesn't remedy the lack of compliance with s.18E.

ISSUE #3:

Burden of Proof:

[22] Section 18H (1A)(b) applies here. When she filed her mobility application in February 2020, Ms. D was not in substantial compliance with the 2019 consent order. She was living in Ontario and hadn't made arrangements for Mr. Z to exercise parenting time. In these circumstances, there is no presumption in favour of the move. Both parents carry the onus of proving that their parenting plan is in the best interests of the children in accordance with s.18H(e).

Material change in circumstances:

[23] Although Ms. D's application filed February 13, 2020, isn't a variation application, I must treat it as such pursuant to s.37 of the *PSA*, because there is already a parenting order in place.

[24] The Supreme Court of Canada held in **Barendregt v Grebliunas**, 2022 SCC 22 that:

> 113. Even where there is an existing parenting order, relocation will typically constitute a material change in circumstances…"

That's confirmed in s.18(H)(5) of the *PSA* which states:

> (5) The relocation of a child is deemed to constitute a change in circumstances for the purpose of a variation order under Section 37.

[25] I'm satisfied that the first hurdle of the test for variation is met. There's been a material change of circumstances arising from Ms. D's move to Ontario.

Best Interests of the Children:

[26] The second step in the **Barendregt** test requires consideration of whether relocation is in the best interests of the children. That's essentially the same test laid out in s.18(5) and s.18(H)(1) of the *PSA*. In accordance with these sections, I have given the best interests of the children priority in this decision.

Maximum contact & family violence, abuse, or intimidation:

[27] I have also considered and applied s.18(8) of the *PSA*.

[28] Ms. D claims that Mr. Z was abusive throughout their relationship; Mr. Z denies this. I have reviewed the evidence with care, as this type of finding has significant implications.

[29] Credibility plays an important role in assessing the evidence in cases such as this. I can accept all, some, or none of a witness' evidence. A witness's evidence may be unreliable for many reasons, including a poor memory, or lack of opportunity to properly observe the events about which they're testifying. Such a witness isn't necessarily trying to mislead the court, but their evidence may still merit little weight.

[30] More problematic is a witness whose evidence is not credible because they have a motive to mislead, or if they convey an inconsistent version of events, for example.

[31] Assessments of credibility are made more difficult where there is a language barrier, which is the situation here. Both parents speak English as a second language. A translator was available on a limited retainer to translate the testimony of Ms. D's parents, both of whom speak Mandarin only. Ms. D and Mr. Z testified without the interpreter's assistance. Both were able to communicate their evidence in English, though Ms. D was more fluent.

[32] I have weighed the evidence of all witnesses with these limitations in mind. I accept the evidence of Mr. Z in preference to the evidence of Ms. D on the issue of family violence, due largely to the inconsistencies in Ms. D's evidence and her evasiveness on cross-examination.

[33] I place little weight on the evidence of Ms. D's parents. Both grandparents support Ms. D's version of events, but her father had little opportunity to observe events, as he was back and forth to China and acknowledged that he relied on Ms. D and his wife for information.

[34] Likewise, I place little weight on the evidence of Ms. W (Ms. D's mother). Her evidence was exaggerated and strategic. When Ms. D's lawyer asked Ms. W to adopt her affidavit for purposes of cross-examination, Ms. W initially refused,

saying it was incomplete. She tried several times to introduce new evidence about an alleged assault against her by Mr. Z (and she mimed the assault by beating her head and choking herself).

[35] I refused to allow this *viva voce* evidence. All witnesses were required to file affidavits well in advance of the hearing. Parties are entitled to know the case they have to meet in court. To permit this evidence at the hearing would have prejudiced Mr. Z, or at the very least necessitated an adjournment.

[36] Further, Ms. W's affidavit was completed with Ms. D's assistance. She used Google translate in working with her mother to draft the affidavit. If there was an omission in Ms. W's affidavit, Ms. D should have remedied that through her counsel before the hearing.

[37] Mr. M had the opportunity to observe the parties parenting before their separation, and he says that Ms. D was an immature mother who relied largely on others, including Mr. Z, to care for the children.

[38] Mr. M is involved in ongoing litigation with Ms. D, so her counsel says I must disregard his evidence for reasons of bias. I carefully considered his evidence in that context, and I find that he delivered his evidence in a candid and balanced manner.

[39] I'm also satisfied that the alleged inconsistencies in his evidence were clarified when he was recalled by agreement. Ms. D produced a copy of a bank draft in his name, but that doesn't mean that he received the monies. No endorsed draft was tendered, and the withdrawal from Ms. D's account simply reflects the nature of a bank draft. I accept Mr. M's evidence that he'd never seen the draft or received the monies.

[40] I have significant concerns with Ms. D's evidence. There are inconsistencies in her allegations of family violence, she was evasive and strategic on cross-examination, and her escalating allegations of child neglect and abuse coincide with her attempts to remove the children from Nova Scotia, thus adding weight to the suggestion she has motive to deceive.

[41] Dealing first with the inconsistencies, I note that when Cape Breton Regional Police (CBRPS) attended Ms. D's residence on January 3, 2019, it wasn't clear who assaulted whom, though officers thought it was Mr. Z who was assaulted, and that Ms. D's mother instigated the altercation.

[42] When social workers spoke with her on January 3, 2019, Ms. D reported that Mr. Z was violent in the past. The only example she gave was the year prior, when she alleged that he grabbed her arm and hit her on the head and shoulder. She didn't say that this occurred when she was pregnant, though it's possible, as the younger child was born in May 2018.

[43] The domestic violence coordinator with the CBRPS met with Ms. D after this incident to complete a risk assessment. The form used in such assessments includes a series of questions, such as whether the complainant has been assaulted while pregnant. Ms. D answered yes, and it's only after that interview that Ms. D started consistently reporting an assault while pregnant. Yet in her affidavit of April 2021 Ms. D says that she was first assaulted in 2017 when her oldest child was 3 – 4 months old (paragraph 8).

[44] Ms. D called police in October 2019 to report that Mr. Z defrauded her over the sale of some property. Police declined to investigate this allegation and noted that she'd called "a half dozen times" in the past year.

[45] Ms. D called child protection services (CPS) a number of times before returning to Cape Breton. She returned on November 1, 2020, and on November 4th she called CPS with complaints that her daughter returned from a visit with her father "hungry, thirsty and crying". CPS did not accept that referral for investigation.

[46] She then called CPS on December 2, 2020, expressing fear that Mr. Z would neglect the girls during visits. When the social worker advised that such concerns don't warrant an investigation, Ms. D asked what type of situation **does** warrant CPS involvement? CPS declined to provide examples, but after that call, the seriousness of her complaints escalated.

[47] In January 2021, Ms. D called CPS to report that the children were left alone during a visit. She provided a video of her questioning the older child in support of her allegation, but when a Mandarin-speaking officer reviewed the video, he advised that Ms. D was asking the child leading questions and suggesting answers to her.

[48] The allegations then got even more serious. On February 19, 2021, a Transition House worker called CPS on Ms. D's behalf. She reported that Ms. D was "feeling pressure from the lawyer for access". She relayed that Ms. D told her the older child returned from a visit on February 1, 2021, extremely upset, and that

it took hours to calm her. Ms. D didn't question the child that night, nor did she call CPS right away.

[49] According to the CPS notes, Ms. D told the Transition House worker that when she eventually asked the child why she was upset on February 1st, she reported that her father touched her inappropriately. When CPS asked Ms. D why she waited so long to question the child, and why she didn't report her concerns sooner, she responded that "she didn't want to talk about it".

[50] When CPS workers met with Ms. D to discuss this allegation on March 9, 2021, she reported new concerns. She said she was bathing the older child on February 27 and noticed that her vaginal area was red. Yet despite the fact that she'd already contacted CPS several times, Ms. D didn't immediately call them, nor did she take the child to be assessed by a medical professional.

[51] CPS accepted the February 19th referral for investigation and arranged a joint protocol interview (JPI) with social workers and CBRPS. That interview took some time to arrange, due to the need for a translator. Ms. D expressed concerns with this delay (claiming that the child might forget) yet when the joint protocol interview was initially scheduled, she said that she wasn't available that week. Nor was she available for the second date set for the interview, although ultimately, that date had to be rescheduled in any event.

[52] When the JPI was held on May 27, 2021, Ms. D did not accompany the child. Her mother took the child to the interview. When CPS questioned her where she was that day, Ms. D was evasive and finally admitted that she was in Bedford (CPS file – page 47 of 54) working remotely from a friend's house.

[53] As a side note, this evidence supports Mr. Z's claim that Ms. D was leaving the children in the care of her parents while she worked away from home. Ms. W's evidence also confirms that she cared for the children in Cape Breton Regional Municipality (CBRM) for well over a month in 2022 while Ms. D was working in Ontario.

[54] In the May 27th JPI, the child made no disclosure of sexual abuse, though she did comment that her father "was a good guy before, but he turned into a bad guy". She also made comments about her father not going to work or having money, and she knew his views on their move to Toronto. This led CPS to caution Ms. D against discussing adult matters with the children present.

[55] I recognize that in some cases of domestic violence, victims may be unwilling to report abuse until after the relationship ends, or they may be unwilling to provide details when first questioned. As they begin to feel safer, they may offer further details. That isn't the case here. Ms. D's reports don't lack details, they are inconsistent, and the timing is highly suspect.

[56] In contrast, Mr. Z's evidence is consistent, and though he also has a motive to deceive, I find no evidence of deception.

[57] The onus of proof is a civil one. Even where there are serious allegations like these, the onus remains the same. Ms. D must prove her allegations on a balance of probabilities. The evidence falls far short of proving that Mr. Z neglected or sexually abused his children. Nor am I satisfied, on a balance of probabilities, that there is a history of domestic violence perpetrated by Mr. Z, as Ms. D alleges.

[58] Instead, I find that Ms. D deliberately set out to exclude Mr. Z from the children's lives. She even calls them by the names she prefers, which differ from their legal names. Her allegations of neglect and sexual abuse are part of that campaign.

[59] Having said that, I am satisfied that the parties had a difficult separation which led to conflict. It's not clear who assaulted whom on January 3, 2019, but it's clear that the children were exposed to conflict between the parents and grandmother. The children have also been exposed to adult conversations. That is not in their best interests.

[60] Ms. D's question to CPS about what type of allegation would merit their involvement is telling. After that conversation, her referrals became more serious, culminating in allegations of sexual abuse, which Mr. Z vehemently denies. There's no objective evidence to support the allegations, such as medical evidence or photos. Nor were charges ever laid. And although the latter isn't conclusive, when considered with the evidence as a whole, it satisfies me that there is no merit to Ms. D's allegations of sexual abuse.

[61] Ms. D has raised other allegations against Mr. Z, including fraud in relation to a property transaction. She is also involved in litigation with Mr. M. over a vehicle the parties owned. I can only consider the evidence properly tendered in this hearing, but there's clearly more at play here than a parenting dispute.

[62] Mr. Z argues that Ms. D is actively trying to alienate the children. Ms. D says that her actions don't go that far. I disagree. A finding of alienation is a serious one and must be made in the context of the parties' history. In December 2019, before Ms. D moved with the children to Ontario, she messaged Mr. Z to advise that: "we go to vacation". She didn't provide any details, so Mr. Z asked his counsel to make inquiries. Ms. D's counsel advised that Ms. D was going to Toronto for a visit, and then to China for Chinese New Year.

[63] However, Ms. D didn't go to China. Without further notice to Mr. Z, she accepted a job in Ontario, bought a residence, and enrolled the older child in school.

[64] Ms. D was familiar with the court process when made this move. She was represented by counsel when the separation agreement was negotiated, and when the order incorporating the agreement was issued by the court. She knew that notice of relocation was required, because she'd purported to provide notice in her text of September 3, 2019. She also knew that there was a court order permitting Mr. Z to exercise parenting time.

[65] Despite all that, she left Nova Scotia with the children in December 2019 under the guise of going on vacation and set up residence with the children in Ontario. As noted above, she says that he agreed to the move. However, if that was true, there would be no need to mislead Mr. Z about going on vacation.

[66] I granted an order on February 18, 2020, directing Ms. D to return to CBRM, pending a hearing on her mobility application. She failed to return, so Mr. Z filed a motion for contempt, and Ms. D was held in contempt on March 5, 2020.

[67] Ms. D finally returned to CBRM on November 1, 2020, she self-isolated for two weeks in accordance with provincial health directives. Just when Mr. Z's parenting time was scheduled to restart, Ms. D called CPS to report ever more serious allegations against him.

[68] Around the same time that she made referrals to CPS, Ms. D applied to suspend Mr. Z's parenting time or to require supervision of his parenting time. That motion was held in abeyance while the CPS investigation was underway, but delays with that investigation led to a lengthy delay in Mr. Z resuming his parenting time in any event.

[69] When CPS concluded its investigation, Ms. D agreed to allow Mr. Z to exercise make-up parenting time with the children. After she calculated that he'd made up for lost time, she unilaterally reduced his parenting time to eight hours per week with no overnights. The consent order allows him one day of parenting time per week.

[70] Mr. Z relies on the decision of Haley, J in **NS v JB**, 2021 NSSC 141, in which the mother made repeated attempts to discredit the father with CPS in a plan to "alienate and get away from" the father. He argues that Ms. D is doing exactly the same thing. I agree.

[71] What does this mean in the context of Ms. D's mobility application? Section 18(6) of the *PSA* requires the Court to consider all relevant circumstances when determining the best interests of the child, including:

> (a) the child's physical, emotional, social, and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

- These children are 5 and 4 years of age. They are entirely dependant on the adults in their lives to provide care. They have been exposed to adult conflict, and they have gone long periods without seeing their father. There's little evidence about their individual needs, though I do know that the older child is now school age and has suffered from a rash that Ms. D says went untreated while she was with Mr. Z. He says that he brought the child for treatment, and it was determined to be an allergy. He has also sought out dental care for the children as well.

> (b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

- Ms. D has not supported the children's connection with Mr. Z and has actively tried to disrupt it. I find that she would continue to do so if the children are permitted to move to Ontario. Mr. Z says that he is willing to ensure the children see their mother regularly if they remain in CBRM Breton, and there's no evidence to suggest otherwise.

> (c) the history of care for the child, having regard to the child's physical, emotional, social, and educational needs;

- The children have been in their mother's primary care their whole lives, although since she accepted a job on Ontario, she has spent significant periods of time there while the children remained in CBRM with their maternal grandparents.

- Mr. Z was not the parent to provide for their basic needs while the parties were together, and Ms. D has limited his parenting time since separation. However, he is able to provide care for the children over extended periods, as evidenced by their stay during Christmas 2021. It is notable over that extended period that Ms. D did not check on the children, so presumably she was satisfied that they were well cared for.

(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social, and educational needs;

- Ms. D says that the schools in Ontario offer better opportunities for the children. She enrolled the older child in school in Richmond Hill, while the younger child was enrolled in daycare. However, the older child has been attending school virtually since she returned to Cape Breton, at times while in her grandparents' care. They don't speak English, so their ability to supervise her participation is questionable. Ms. D says that if she is allowed to move the children to Ontario, her parents will move with her to care for the children.

- Mr. Z says that the local schools offer equal opportunities to the children, and he plans to enrol them in extracurricular activities as well. He offers a plan in which he would care for the children with help from friends and family, when he's unavailable. Other than Mr. M who testified that he and his wife will help as needed, no other support people offered evidence in support of this plan.

(e) the child's cultural, linguistic, religious, and spiritual upbringing and heritage, including the child's Aboriginal upbringing and heritage, if applicable;

- The children are of Chinese descent and speak Mandarin at home. Their maternal grandparents, who provide a lot of their day-to-day care, do not speak English.

(f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;

- The children are too young to offer or ascertain their views.

(g) the nature, strength, and stability of the relationship between the child and each parent or guardian;

- The children have a close relationship with their mother, as she is their primary caregiver, and contact with their father has been limited. He's developed a closer relationship with the children since they returned to CBRM and he's been able to exercise parenting time.

(h) the nature, strength, and stability of the relationship between the child and each sibling, grandparent, and other significant person in the child's life;

- The children are very close to their maternal grandparents, who provide a lot of their day-to-day care. Mr. Z says that his parents will come to Cape Breton to help him with childcare if the children are placed primarily with him, but it's unclear whether the paternal grandparents have ever met the children.

(i) the ability of each parent, guardian, or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child;

- Ms. D has shown that she is only grudgingly able to cooperate with Mr. Z in arranging parenting time. Indeed, she has shown she will go to great lengths to interfere with his parenting time. Even after she returned to CBRM, she only allowed as much make-up time as she calculated was due, and then she unilaterally terminated the extra time, and limited Mr. Z's parenting time.

- Although she says that she's prepared to ensure Mr. Z sees the children if they move to Ontario, I reject that claim. I find that she will continue to actively interfere in, and limit, Mr. Z's parenting time.

- Mr. Z says that he will ensure that Ms. D sees the children if they are placed in his care and I accept that. Other than a vague allegation that Mr. Z refused to return the children on two occasions when he was making up lost parenting time, there's no evidence to suggest otherwise.

(ia) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child; and

- There are no other proceedings that impact the safety, security and well-being of the children.

(j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

- Ms. D's parents have acted as the go-between for parenting exchanges, thereby reducing the potential for conflict between the parties. I find that a requirement for the parties to cooperate in parenting the children in a shared arrangement poses no risk to the children or Ms. D, as their conflict arose in the context of their separation and the informal parenting arrangements at the time. Under a court order with specified terms, conflict will be far less likely.

[72] I must also consider the factors s.18H(4) because this is a mobility application:

(a) the circumstances listed in subsection 18(6);

- See above

(b) the reasons for the relocation;

- Ms. D's decision to move to Ontario was based on her own needs, rather than the needs of the children. She told CPS that she had better employment opportunities and better social connections with her CBU classmates having moved to Toronto (CPS file – page 12 of 54). This belies the original reason she offered for the move, which was to access better opportunities for the children (text of August 3, 2019).

(c) the effect on the child of changed parenting time and contact time due to the relocation;

- Ms. D says that the children didn't see their father often before the move, so the move makes little impact on them. She also says that he didn't request time with the children. Mr. Z was in China for three months after the consent order was issued, but I accept that after he returned in March 2019 his requests for parenting time were largely denied. What little parenting time Mr. Z exercised was entirely cut off after the move, such that Ms. D now claims that the children don't know their father.

- Although Ms. D claims that she would welcome requests for parenting time and would make the children available should Mr. Z travel through Toronto, her actions demonstrate that she's not open to Mr. Z playing a role in the children's lives. In effect, if the children of move, it will mean an end to their relationship with their father.

(d) the effect on the child of the child's removal from family, school and community due to the relocation;

- The children have connections to the Cape Breton community, as they lived here for several years. However, the younger child would have no memories of her life here. The children have a physician and dentist here, Mr. Z has family friends with young children, and most importantly, their father resides here.

- There's little evidence to demonstrate what connections to Ontario the children have made as a result of their mother's move. The older child is enrolled in school there, but she attends virtually, so it's not clear whether she's made friends. However, Ms. D's social circle may provide a social circle for the children as well.

(e) the appropriateness of changing the parenting arrangements;

- Major changes to parenting arrangement may be appropriate where one parent's attempts to alienate the children negatively impacts the children's relationship with the other parent. Children are entitled to a secure, loving relationship with both parents.

(f) compliance with previous court orders and agreements by the parties to the application;

- Ms. D was not compliant with the consent order and was held in contempt. She was fined, and a warrant for her arrest was issued (but held) to prevent her from leaving CBRM with the children without court approval.

(g) any restrictions placed on relocation in previous court orders and agreements

- Not applicable.

(h) any additional expenses that may be incurred by the parties due to the relocation

- The parties would incur transportation expenses between CBRM and Toronto. Given the young ages of the children, they are unable to fly unaccompanied, so either Mr. Z will have to travel to Toronto to see them (with all associated expenses including hotel, meals and flights or fuel costs) or an adult will have to accompany the children to CBRM and back. In either case, travel expenses will be high.

(i) the transportation options available to reach the new location;

- Neither party led evidence on this, but I am aware that there are flight options available to the greater Toronto area. A trip by car would necessitate at least one overnight each way.

(j) whether the person planning to relocate has given notice as required under this Act and has proposed new decision-making responsibility, parenting time and contact time schedules, as applicable, for the child following relocation.

- Proper notice was not provided. Ms. D only laid out her parenting plan in her May 2022 affidavit. It lacks specifics, such as dates and travel arrangements. It simply proposes:

a) Generous contact time via social media;

b) One week parenting time during Christmas break;

c) 2 weeks during summer break; and

d) Flexible parenting time when the father stops in Toronto during his trips to China.

Conclusion on Parenting:

[73] I'm satisfied that both parents were young and inexperienced when their children were born. Ms. D has traditionally been the primary caregiver for the children, while Mr. Z was the main income earner.

[74] It's clear that after Ms. D returned the children to CBRM in late 2020, she split her time between Ontario and CBRM and relied on her parents for childcare over extended periods. She did not allow the children to spend extra time with their father instead of leaving them with her parents.

[75] I'm also satisfied that Mr. Z was busy establishing and running his business, such that his time with the children was limited by these responsibilities before separation. That reality is likely reflected in the consent order which provides him with parenting time only one day per week. However, I find that Mr. Z did help with the children, and he tried to exercise parenting time with them according to that order, though Ms. D actively blocked it.

[76] Despite those problems maintaining contact, I'm satisfied that Mr. Z does have a good relationship with the children, and he's has fought a long battle to maintain his bond with them.

[77] Both parents have presented plans that lack important details. I'm not satisfied that either plan, as currently formulated, meets the children's best interests.

[78] I do not find that it's in the children's best interests to move to Ontario. I'm satisfied that if Ms. D is permitted to move the children, she will continue her campaign of alienating the children from their father. He fears that if she moves with the children, he will never see them again. That's a real possibility. I don't accept Ms. D's assurances that she will ensure that the children see their father if they're permitted to move.

[79] The problem is that I'm not satisfied Mr. Z's plan meets the children's best interests either. He asks me to place the children in his primary care with decision-making responsibility if Ms. D moves. He says that he and Ms. D can work out her parenting time by agreement. I think that's naïve.

[80] In addition, Mr. Z has never been the primary care parent, and his plan is not well developed. For example, he says that he has friends who will help with

childcare and that his parents will move here from China. Other than Mr. M, none of his support people testified. It's not even clear whether his parents have met the children, nor whether they are able to move to Canada immediately to assist him with childcare.

[81] Mr. M testified that he and his wife are willing to help Mr. Z, but they live at least 20 minutes outside of Sydney and they are older, with their own family and responsibilities. They may not be able to help on short notice, for example if one of the children becomes ill and must leave school early.

[82] There are other weaknesses with Mr. Z's plan. He says that his hours are flexible as owner of the business. However, when he negotiated parenting time in late 2018, he agreed to only one day per week. That likely reflects his work responsibilities at the time.

[83] Now he says that he has a manager, so he only does paperwork which can be done after hours. He says that he can get the children ready in the morning and deliver them to school, and that he's available in the evenings as well. Mr. Z's priorities have obviously changed with Ms. D's move, but a reliable, flexible childcare provider is still a necessity.

[84] In that respect, Mr. Z plans to enroll the girls in school and daycare near his home. He is available in the mornings, but he'll need after-school care. Yet he testified that he doesn't know if there's an after-school program available at the local school. These are details that should be investigated and confirmed before presenting a plan as primary caregiver.

[85] I have considered and rejected Ms. D's allegations of family violence, abuse, and intimidation, so I am not limited by those concerns in maximizing the children's time with their father. Instead, I find that it's in their best interests to do so, especially where they have been spending extended periods of time with the maternal grandparents instead of with Mr. Z in recent months.

[86] Considering all of the evidence, the factors in s.18 of the *PSA*, and the paramount consideration of what's in the best interest of the children, I find that it's appropriate to vary the parenting order as follows:

- Ms. D and Mr. Z will share decision-making responsibility and care of the children. The children will reside with each parent on a week-about schedule,

from Sunday at noon until the following Sunday at noon. Starting July 31, 2022, the children will move to their father's home for a week, then the children will move to their mother's home the following week on Sunday, August 7, 2022, at noon, and the rotation will continue weekly thereafter.

- Each parent will have the right to contact the children for a video call once each Wednesday evening while the children are with the other parent. Such parenting time will be initiated by the parent having care of the children, and will last no longer than 30 minutes. The call must be child-focused, and there must be no adult discussions or interrogation of the children about the other parent.

- Neither parent will remove the children from Nova Scotia unless the other parent agrees in advance in writing.

- The children will be delivered to the other parent (or their designate) at McDonald's playland on Welton Street, Sydney on Sundays at noon. If McDonalds's is not open on the exchange day, the exchange will take place in the restaurant parking lot.

- The adults involved in the exchange will not speak negatively or in a hostile manner in front of the children and they will not record the exchange.

- The parents will not discuss adult matters, including the court process or support issues, in the presence of the children. They will not speak negatively about the other parent to, or in front of, the children and they will ensure that others refrain from doing so as well. There must be no interrogation of the children about the other parent.

- The children will not be used to carry or convey messages to the other parent.

- Both parents will ensure that clothing, items of comfort, medications, electronics, and toys that come with the child, return with the children.

- During the week that each parent has care of the children, that parent will make day-to-day decisions involving the children.

- The children will be enrolled in school (and pre-primary) in CBRM. Mr. Z may select the school and enroll the children, and the children will be enrolled in their legal names. Both parents are entitled to attend school events and to access

information on the children's progress from all professionals involved in their education, as well as through the school portal.

- Each parent will make their own childcare arrangements for when the children are in their care.

- Ms. D will make decisions and act on arranging the children's healthcare, including dental care if she fails to do so, Mr. Z may arrange such appointments. Both parents are entitled to attend health and dental appointments and to access information on the children's health from all professionals involved in their healthcare, including physicians, dentists, and counsellors.

- The parents will communicate in writing, via a communication app which Mr. Z will choose and pay to purchase. Once notified of the purchase, Ms. D will add the app to her phone immediately. Thereafter, each parent will pay to maintain the app for themselves.

- Communications via the app will be limited to child-related issues. However, in case of an emergency involving the child(ren) the parent who has care of the child(ren) must immediately notify the other of the nature of the emergency by phone or text.

- Both parties must keep each other up to date on their contact information. Within 7 days of this decision and within 7 days of any change to their contact information, each must provide the other with a home address where the children will reside in CBRM, their cell phone number, and their email address.

- The children's Canadian and Chinese passports will be held by Mr. Z's legal counsel, to be released only on the written agreement of both parties or by further order of the court.

- There will be no special holiday schedule. The regular schedule will apply year-round, unless the parties agree in writing in advance to modify it.

[87] In the event that Ms. D relocates without the children, Mr. Z will assume sole parenting and decision-making responsibility for the children. In that case, I reserve jurisdiction to determine the parenting time schedule for Ms. D that meets the children's best interests. Ms. D will have 90 days to determine which path she

chooses. Counsel may request a review date in 90 days to sort through these details, if necessary.

MacLeod-Archer, J.